

## **JOINDER AND SEVERANCE — Joinder of cases involving multiple defendants**

**Revised 11/2009**

Rule 13.3(b), Ariz. R. Crim. P., provides for joinder of two or more defendants for trial when the offenses are sufficiently connected:

b. Defendants. Two or more defendants may be joined when each defendant is charged with each offense included, or when the several offenses are part of a common conspiracy, scheme or plan or are otherwise so closely connected that it would be difficult to separate proof of one from proof of the others.

And Rule 13.3(c) provides that connected cases may be consolidated for trial even though they have been charged separately:

c. Consolidation. If such offenses or such defendants are charged in separate proceedings, they may be joined in whole or in part by the court or upon motion of either party, provided that the ends of justice will not be defeated thereby.

Rule 13.4 covers severance. The Rules of Criminal Procedure regarding joinder and severance are intended to be read together. "Rule 13.3(c) regarding consolidation must be read with Rule 13.4 regarding severance. . . The decision to grant a motion to consolidate or to sever is generally within the sound discretion of the trial court." *State v. Kinkade*, 140 Ariz. 91, 93, 680 P.2d 801, 803 (1984). The Arizona Supreme Court has noted that, "although there is some possibility of confusion in a joint trial, in the interest of judicial economy, joint trials are the rule rather than the exception." *State v. Van Winkle*, 186 Ariz. 336, 339, 922 P.2d 301, 304 (1996); *State v. Murray*, 184 Ariz. 9, 25, 906 P.2d 542, 558 (1995), *citing United States v. Camacho*, 528 F.2d 464, 470 (9th Cir.), *cert. denied*, 425 U.S. 995 (1976). Despite the preference for joint trials, the rules on joinder and severance "are intended to further not only liberal joinder but liberal

severance." *State v. Bravo*, 171 Ariz. 132, **139**, 829 P.2d 322, 329 (App. 1991), *quoting* *State v. Day*, 148 Ariz. 490, 493-94, 715 P.2d 743, 746-47 (1986).

When multiple defendants are charged with the same offense which can be proved by the same evidence, the cases against each defendant may be joined for trial. In *State v. Grannis*, 183 Ariz. 52, 900 P.2d 1 (1995), Grannis and Webster were charged with murder, theft, and trafficking. The State moved for joint trials, arguing that joint trials "would save time and money because the co-defendants would not present antagonistic defenses, the evidence against them was identical, and many witnesses were from out of state." *Id.* at 58, 900 P.2d at 7. After the trial court ordered the State not to introduce any of Webster's statements that incriminated Grannis, joint trials were held. On appeal, Grannis argued that he was prejudiced by the joint trial. The Arizona Supreme Court noted that Rule 13.4(a), Ariz. R. Crim. P., requires a court to sever the trials of defendants if "necessary to promote a fair determination of the guilt or innocence of any defendant of any offense." In exercising its sound discretion to grant or deny a severance motion, the trial court must balance the possible prejudice to the defendant against the interests of judicial economy. *State v. Cruz*, 137 Ariz. 541, 544, 672 P.2d 470, 473 (1983). When a defendant challenges the trial court's failure to grant a severance, he "must demonstrate compelling prejudice against which the trial court was unable to protect." *Id.*

The *Grannis* Court stated:

Cases have generally held that a defendant is prejudiced to such a significant degree that severance is required when: (1) evidence admitted against one defendant is facially incriminating to the other defendant; (2) evidence admitted against one defendant has a harmful "rub-off effect" on the other defendant; (3) there is a significant disparity in the amount of evidence introduced against each of the two defendants; or (4) co-

defendants present defenses that are so antagonistic that they are mutually exclusive, or the conduct of one defendant's defense harms the other defendant. Sometimes, however, a curative jury instruction is sufficient to alleviate any risk of prejudice that might result from a joint trial.

*State v. Grannis*, 183 Ariz. 52, 58, 900 P.2d 1, 7 (1995) [citations omitted]. The Court found that Grannis's case did not fit into any of those four categories. None of the evidence admitted against Webster facially incriminated Grannis, and the witnesses were admonished to exclude from their testimony any statements that Webster made about Grannis. Second, Grannis suffered no rub-off effect. "Severance is rarely granted when a defendant alleges that the jury's unfavorable impression of his co-defendant, against whom evidence is properly admitted, will influence the way the jurors view the defendant himself." *Id.*, citing *State v. Lawson*, 144 Ariz. 547, 555, 698 P.2d 1266, 1274 (1985). Any potential problems were averted by a jury instruction requiring the jurors to consider the evidence presented against each defendant separately. Third, basically the same the amount of evidence was offered against each codefendant -- although, even if there is a disparity in the amount of evidence offered against each codefendant, "severance is required only if the jury is unable to 'compartmentalize the evidence as it relates to separate defendants.'" *United States v. Singer*, 732 F.2d 631, 635 (8th Cir.1984), quoting *United States v. Jackson*, 549 F.2d 517, 525 (8th Cir.1977)."

*State v. Grannis*, 183 Ariz. 52, 59, 900 P.2d 1, 8. The *Grannis* Court found that the jury could compartmentalize the evidence as it related to each defendant. Fourth, Grannis and Webster did not present antagonistic defenses. Webster alleged that he killed the victim in self-defense, while Grannis contended that he was not present during the murder. "There is nothing contradictory about these defenses, so the jury could easily

believe all the evidence offered on behalf of each defendant." *Id.* Finally, the Court found that the "actual conduct" of Webster's defense did not prejudice Grannis. *Id.*